

Chapter 4: ADJUSTING THE BOX

There are statutory provisions that do not change the options in a box, but expand the prison range that is available in the box. These include enhancements based on the status of the victim (senior citizen victims, bias-related offenses, and citizen patrol victims), repeat offenses, third strike laws, statutory aggravating factors for murder and sex offenses, drug- and gun-free zones, and selling drugs to minors. See Appendix H.

If enhancement papers have been filed or if a statutory enhancement has been proved to the fact finder, the top of the prison range is increased by the same percentage or amount as the statutory multiplier or cap. Note that the bottom of the range does not change, only the top.

Example

The guideline prison range for an armed robbery by a person with no prior record is 36 to 84 months. (Master Grid Box 5A) D.C. Official Code § 22-3601 enhances the penalty for enumerated crimes if committed against an individual who is 60 year of age or older. If the victim of the armed robbery is a senior citizen and the enhancement was indicted and proved, the range becomes 36 to 126 months because armed robbery of a senior citizen carries 1 ½ times the penalty of armed robbery of a non-senior citizen (84 months x 1 ½ = 126 months).

The court should apply only one of two or more enhancements. In such a case, the court may, but need not, select the enhancement that raises the top of the range by the greatest percentage.

Note: When deciding where within the expanded box to sentence the defendant, the court may consider that enhancements based on prior convictions, (i.e., “repeat papers”) may be based on the same convictions that have determined the criminal history score.¹³ Thus, the same conviction that contributes to moving the defendant to the right on the sentencing grid, exposing the defendant to a higher sentencing range, may also increase the top of the range through the operation of the enhancement rule. In determining where within the expanded box to sentence the defendant in such a situation, the court may consider the dual effect of the prior record.

Note: A conviction for accessory after the fact reduces by one-half both the top and the bottom of the prison range available in the box applicable to the underlying offense.

¹³In some cases, repeat papers will be filed based on convictions that do not contribute to the criminal history score. For example, if the prior conviction has lapsed according to the guideline rules, see Chapter 2, then the prior conviction will not be counted toward the defendant’s criminal history score but that conviction may still be the basis for the filing of repeat papers. Similarly, if the defendant has six criminal history points, additional convictions will not be counted toward the defendant’s criminal history score.

